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Bluestone Innovations Texas, L.L.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BLUESTONE INNOVATIONS TEXAS,
L.L.C.,

Plaintiff,

v.

HUGA OPTOTECH INC.; NICHIA
CORPORATION; and NICHIA AMERICA
CORPORATION,

Defendants.

Case No. 3:12-cv-00059-SI

Honorable Susan Illston

**NOTICE OF MOTION AND MOTION
TO SUBSTITUTE PLAINTIFF**

DATE: November 2, 2012

TIME: 9:00 a.m.

COURTROOM: 10, 19th Floor

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

1 PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 25(c),
2 Bluestone Innovations Texas, L.L.C. (“Bluestone Texas”) respectfully moves for an order
3 substituting Bluestone Innovations, L.L.C. (“Bluestone Innovations”) as the plaintiff in the above
4 captioned matter. This motion will be heard on November 2, 2012 at 9:00 a.m., or as soon
5 thereafter as the matter may be heard, before the Honorable Susan Illston, United States
6 Courthouse, 450 Golden Gate Avenue, San Francisco, California.

7 In support of this motion to substitute, Bluestone Texas states as follows:

8 1. Plaintiff Bluestone Innovations Texas, L.L.C. filed this case alleging that it is the
9 owner of United States Patent No. 6,163,557 (“the ‘557 patent”) and that the defendants are
10 infringing claims of that patent.

11 2. Bluestone Innovations Texas, L.L.C. has assigned all of its rights, title, and interest in
12 and to the ‘557 patent to Bluestone Innovations L.L.C. That assignment included “all causes of
13 action (whether known or unknown or whether currently pending, filed, or otherwise) and other
14 enforcement rights under, or on account of the ‘557 patent.” See Ex. A-1

15 3. Federal Rule of Civil Procedure 25(c) “allows the court to substitute a party upon a
16 transfer of interest.” *Esparza v. Indymac Bank, F.S.B.*, No. 09-cv-03891, 2010 WL 2925391 at
17 *2 (N.D. Cal. July 26, 2010); see also Fed.R.Civ.P. 25(c) (“If an interest is transferred, the action
18 may continue by or against the original party unless the court, on motion, orders the transferee to
19 be substituted in the action or joined with the original party.”). The assignment of the ‘557
20 patent is a transfer of interest within the meaning of Rule 25(c). See *Esparza*, 2010 WL 2925391
21 at *2 (finding transfer of interest within meaning of Rule 25(c) where FDIC was appointed as
22 receiver of failed bank, succeeding to all of its “rights, titles, powers, and privileges”).

23 4. Bluestone Innovations, L.L.C. is an affiliate of Bluestone Innovations Texas,
24 L.L.C. and both entities are wholly owned subsidiaries of Bluestone Innovations Holdings, L.P.,

1 which is not a party to this action. Bluestone Innovations, L.L.C. will be represented by the
 2 same counsel, including local counsel, that have represented Bluestone Innovations Texas,
 3 L.L.C. in this action.

4 5. Bluestone has consulted with defendants on the relief sought. Huga Optotech Inc.
 5 does not oppose Bluestone's motion. Counsel for Nichia America Corporation and Nichia
 6 Corporation (collectively "Nichia") was first contacted regarding this motion September 18,
 7 2012. As of the filing of this motion on September 28, 2012, counsel for Nichia was unable to
 8 provide a response as to whether it intended to oppose this motion or not.

9 6. Pursuant to Rule 25(c) and the points and authorities cited above, Bluestone
 10 Texas respectfully moves this Court to enter an order substituting Bluestone Innovations as the
 11 plaintiff in this action.

12
 13 Dated: September 28, 2012

Respectfully submitted,

14 /s/ David J. Mahalek
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23
 24 Attorneys for Plaintiff
 Bluestone Innovations Texas, L.L.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 28, 2012 the foregoing

NOTICE OF MOTION AND MOTION TO SUBSTITUTE PLAINTIFF

was filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following counsel of record.

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I certify that all parties in this case are represented by counsel who are CM/ECF participants.

Choose a building block.

/s/ David J. Mahalek

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